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No. 47.

IN THE

Supreme Court of the United States

October Term, 1966.

UNITED STATES OF AMERICA,
Appellant,

v.

ANTHONY L. FABRIZIO.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK.

BRIEF FOR THE APPELLEE.

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THE REPORTER COMPANY, INC., Walton, N. Y. 13856—865-4181—1966

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK.

BRIEF FOR THE APPELLEE.

Opinion Below.

The order of the district court dismissing the indictment (R. 10) is not reported.

Jurisdiction.

The order of the district court was entered on October 5, 1965 (R. 10). The notice of appeal was filed on November 4, 1965 (R. 11-12), and this Court noted probable jurisdiction on February 21, 1966 (R. 13; 383 U.S. 904). The jurisdiction of this Court rests on 18 U.S.C. 3731.

Statute Involved.

18 U.S.C. 1953 provides as follows:

> §1953. Interstate transportation of wagering paraphernalia
>
> (a) Whoever, except a common carrier in the usual course of its business, knowingly carries or sends in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event; or (c) in a numbers, policy, bolita, or similar game shall be fined not more than $10,000 or imprisoned for not more than five years or both.
>
> (b) This section shall not apply to (1) parimutuel betting equipment, parimutuel tickets where legally acquired, or parimutuel materials used or designed for use at racetracks or other sporting events in connection with which betting is legal under applicable State law, or (2) the transportation of betting materials to be used in the placing of bets or wagers on a sporting event into a State in which such betting is legal under the statutes of that State, or (3) the carriage or transportation in interstate or foreign commerce of any newspaper or similar publication. * * *

Question Presented.

Whether the mere carriage in interstate commerce from New Hampshire to New York of 75 "acknowledgments of purchase" of the New Hampshire Sweepstakes, an event conducted by the State of New Hampshire to raise revenue for educational purposes, charges a crime under 18 U.S.C. Section 1953?

Statement.

On September 3, 1964, an indictment was returned in the United States District Court for the Western District of New York alleging that appellee knowingly carried in interstate commerce from New Hampshire to New York "records, papers and writings, to wit: 75 acknowledgements of purchase for a sweepstakes race of the State of New Hampshire, to be used, and adapted, devised and designed for use, in a wagering pool with respect to a sporting event, that is: a sweepstake race of the State of New Hampshire * * *" (R. 3). On September 24, 1964, in response to a motion by appellee, the United States filed a bill of particulars, stating that "1. It is claimed by the United States that defendant knowingly carried in interstate commerce in violation of Section 1953, T. 18, United States Code, 75 written acknowledgements of purchase of State of New Hampshire First Sweepstakes Race of September, 1964; 2. It is not charged by the United States that the defendant violated any State law, ordinances or rules. The United States charges that the defendant violated §1953, Title 18, United States Code" (R. 5).

On October 12, 1964, appellee moved to dismiss the indictment on the ground that the indictment on its face and together with the bill of particulars did not state facts sufficient to constitute an offense (R. 4). The grounds for the motion were set forth in a supporting affidavit of one of appellee's attorneys (R. 6-9). While admitting that appellee carried the sweepstakes acknowledgments as charged, the affidavit relying on the legislative history of Section 1953, argued that the appellee's conduct did not fall within the purview of the statute.

On October 5, 1965, the district court dismissed the indictment. Citing House Report No. 968, 87th Cong., 1st Sess., the court stated that "[t]he charge in the indict-

ment does not come within the purpose of Section 1953 of Title 18, United States Code, as disclosed in the legislative history of the Act" (R. 10).

Summary of Argument.

This case presents a problem of construction of a penal statute, 18 U.S.C. Section 1953. That statute was enacted along with other similar penal statutes to constitute a unified federal legislative attack on the use of interstate commerce by organized racketeers to further their illegal business enterprises of gambling, narcotics, prostitution, and liquor. Appellee has been indicted under Section 1953 for the carriage in interstate commerce from New Hampshire to New York of 75 "acknowledgments of purchase" of the New Hampshire Sweepstakes, an event conducted by the State of New Hampshire to raise revenue for educational purposes. The problem of construction turns on an interpretation of the phrase "wagering pool with respect to a sporting event" in Section 1953(a)(b) so as to apply it to the New Hampshire event.

Appellee contends that the indictment does not charge an offense within the purview of Section 1953. A reading of Section 1953(a) shows it applies to a class of commonly recognized forms of illegal gambling associated only with the gambling enterprises of organized racketeering. Section 1953(b) exempts newspapers and all forms of state permitted gambling existing at the time of the passage of this Act. The basic design of Section 1953 is repeated in the companion measures of the program which, read together, demonstrate a consistent pattern of application solely to the illegal business enterprises of organized crime. Other varieties of gambling, legal or illegal, are not touched by this program.

These conclusions drawn from a reading of Section 1953 and its companion measures are made patent by

their legislative history. That history shows that Congressional interest centered wholly on the problem of reaching the activities of organized racketeering enterprises. The legislative history of the program also evinces an equally strong concurrent intent not to legislate concerning other gambling activities legal or illegal.

The interpretation of Section 1953 urged by appellee would not destroy the efficacy of the statute since this indictment presents the rare case where the underlying wagering activity alleged is a legal state conducted event, conclusively rebutting any inference of the kind of illegal activity intended to be prohibited by the statute. Appellee does not argue that the paraphernalia of the New Hampshire event can never underlie a Section 1953 prosecution, but that where New Hampshire acknowledgments are alleged to be the gambling paraphernalia, wagering conduct within the ambit of the statute, other than the New Hampshire event, must be shown.

The interpretation of Section 1953 urged by appellant would destroy the legislative assumptions on which this statute and its companion measures were constructed, thereby allowing these statutes to serve as a vehicle for imposing a federal anti-gambling policy on the states—the very result Congress wished to avoid. The ramifications of such a federal anti-gambling policy would be seriously disruptive of federal-state relations.

In addition, such an interpretation would be unforeseeable in light of the well understood and commonly accepted connotation of the underlying gambling activities enumerated in Section 1953(a). Absurd results would follow, subjecting numbers of would-be law abiding citizens to the same severe criminal penalties intended for organized racketeers. Because the application of Section 1953 to the New Hampshire Sweepstakes is unexpected, the statute so applied, would be void for vagueness as violative of procedural due process.

There is a further issue of criminal procedure presented by appellant's argument of new facts alleging additional conduct on the part of appellee. Since these allegations are neither alleged nor provable under this indictment, they are not before this Court on this appeal. *A fortiori,* this is so where the bill of particulars precludes appellant from asserting these facts.

ARGUMENT.

I. An indictment alleging that appellee carried 75 acknowledgments of the New Hampshire sweepstakes, an event conducted by the State of New Hampshire to raise revenue for educational purposes, from New Hampshire to New York, does not charge a crime under 18 U.S.C., Section 1953, because such conduct is not within its purview.

A. Introduction.

a. The Historical Context of 18 U.S.C. Section 1953 and the Legislative Solution.

18 U.S.C. Section 1953 was enacted into law by the 87th Congress on September 13, 1961. It was one of a series of bills which were designed to form a unified federal statutory attack on organized racketeering, a problem which had increasingly phased federal, state, and local officials. The well known Kefauver crime hearings of 1950 and 1951 brought to national attention the vast scope and power of racketeers who carried on their illegal activities throughout the United States on a highly organized, interstate basis.[1] These hearings and the federal and state crime investigations which followed constituted the

[1] Hearings Before a Senate Special Committee to Investigate Organized Crime in Interstate Commerce, 81st Cong., 2nd Sess. 1950, 1951.

evidential background for the Congressional hearings of 1961 which resulted in the passage of Section 1953[2].

The hearings pinpointed illegal gambling, prostitution, and narcotics as the principal business activities of organized criminals of which illegal gambling was found to be the most pervasive and profitable (Appendix B, ¶¶ 5, 6, 11, 19). Interstate channels of communication and movement were shown to be vital to these organized racketeers not only as essential to the efficient operation of their illegal activities which typically spanned state lines, but also as a means of evading state prosecution (Appendix B, ¶¶ 1, 2, 3, 10, 12).

The objective of Section 1953 and its companion measures was to close interstate channels whenever their use is in furtherance of the underlying illegal gambling or other illegal activity identified by the legislative evidence as the bailiwick of organized racketeering (Appendix B, ¶¶ 4, 5, 7, 9, 13).

b. New Hampshire Sweepstakes and its operation.

The New Hampshire Sweepstakes was not in existence in 1961 when 18 U.S.C. Section 1953 and its companion measures were enacted. In fact, at the time Section 1953 and the related statutes were under consideration in Congress, no state sponsored or authorized lottery had been in operation in the United States since 1894, the year in which the lottery conducted under a franchise of the State of Louisiana, ceased its operations.[3]

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[2] *Legislation Relating to Organized Crime*, Hearings, Subcommittee No. 5, House Committee on The Judiciary, 87th Cong., 1st Sess. on R. H. 468, H. R. 1246, H. R. 3021, H. R. 3022, H. R. 3023, H. R. 3246, H. R. 5230, H. R. 6571, H. R. 6572, H. R. 6909, H. R. 7039; *The Attorney General's Program to Curb Organized Crime and Racketeering*, Hearings, Senate Committee on the Judiciary, 87th Cong., 1st Sess. on S. 1653, S. 1654, S. 1655, S. 1656, S. 1657, S. 1658, S. 1665.

[3] Ezell, Fortune's Merry Wheel p. 267 (1960).

The New Hampshire Sweepstakes, which was authorized by the New Hampshire legislature on April 30, 1963, is a lottery event instituted to raise revenue for educational purposes. The unique characteristic of the New Hampshire Sweepstakes is that it is conducted entirely by the State of New Hampshire through an agency of the State of New Hampshire, the New Hampshire Sweepstakes Commission.[4]

According to New Hampshire statutes, the purchase of a chance on the New Hampshire Sweepstakes must take place entirely within the State of New Hampshire, and may be purchased only at State authorized and controlled locations.[5] Persons licensed by the State of New Hampshire sell tickets from a specifically designed machine. This machine ejects an "acknowledgment of purchase" which is a duplicate of the ticket remaining in the machine. The ticket is retained in the possession of the State of New Hampshire.[6] The "acknowledgment" is merely evidence to the participant that his name has been recorded with the State of New Hampshire. It states on its face that it need not be presented in order to receive prize money, and is non-saleable and non-transferable (R. 9). Thus, the acknowledgment may be destroyed without affecting the participant's right to prize money.

Because of New Hampshire's unique attractions as a nationally favored vacation resort, a very large percentage of purchasers of sweepstakes acknowledgements are out-of-state residents (Appendix C).

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[4] N. H. Rev. Stat. Ann. 284: 21a (Supp. 1965).

[5] N. H. Rev. Stat. Ann. 284: 21h (Supp. 1965).

[6] The operation of the sweepstakes is described in New Hampshire Sweepstakes Commission, New Hampshire Sweepstakes Program, 1966 (Appendix D).

B. The inapplicability of Section 1953 to the conduct described in the indictment is shown not only by a reading of the statute on its face and *in pari-materia* with its companion measures, but also by a clearly expressed legislative intent.

a. The Ambit of the Statute on its Face.

The indictment charges appellee with the carriage in interstate commerce of 75 New Hampshire Sweepstakes acknowledgements, "to be used, and adapted, devised and designed for use, in a wagering pool with respect to a sporting event, that is: a sweepstake race of the State of New Hampshire" (R. 3). Thus, the application of 18 U.S.C. Section 1953 to this charge rests upon interpreting the phrase "wagering pool with respect to a sporting event," so as to apply to a state conducted gambling event. Appellee submits a reading of Section 1953 shows the anomaly of that interpretation.

The phrase "wagering pool with respect to a sporting event" must be read in context with the other enumerated types of gambling grouped in Section 1953(a), subsections (a) and (c). These gambling activities, "bookmaking," "numbers," "policy," "bolita," are familiarly known to be the life blood of organized racketeering and therefore tainted with a special illegality. In the context of these easily recognized illegal gambling activities it is manifest that the phrase "wagering pool with respect to a sporting event does not refer to paraphernalia of the New Hampshire Sweepstakes, which has no similar connotation of illegality, being a wagering event conducted by a State. *Jarecki v. G. D. Searle & Co.*, 367 U. S. 303.

A comparison of Section 1953(a) with Section 1953(b) strengthens the contention of appellee that there is no justification in a reading of Section 1953(a) which treats the phrase "wagering pool with respect to a sporting

event" in a totally different spirit than the other enumerated types of proscribed gambling conduct by expanding that phrase to include a legal sweepstakes activity which is conducted by a State.

The two parts of Section 1953 reflect a pointed legislative effort to distinguish between those activities enumerated in Section 1953(a) which are familiarly known to be conducted illegally by organized criminal elements and other gambling activities not associated with racketeering. Section 1953(b) exempts the major legal forms of gambling established at that time. Clause (1) completely exempts from the operation of the statute pari-mutuel betting equipment, pari-mutuel tickets where legally acquired, and pari-mutuel materials used or designed for use at racetracks or other sporting events in connection with which betting is legal under applicable state law; clause (2) permits the transportation of betting materials to be used in betting on a sporting event into a state where such betting is legal;[7] and clause (3) exempts newspapers and similar publications.

Appellant urges that the specific exceptions of Section 1953(b) are necessarily the only exemptions which may be made to Section 1953(a), thereby seeking to expand the class of obviously illegal gambling in Section 1953(a) to include all other lotteries, legal or illegal, other than those enumerated in Section 1953(b). Appellant's analysis of the significance of these exemptions ignores the dissimilarity in kind between bookmaking, wagering pools,

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[7] The reason for limiting the exemption contained in Section 1953 (b) (2), to transportation of paraphernalia *into* a state where "wagering on sporting event is legal," is not because an exemption similar to that provided for pari-mutuel activity would undermine the gambling policies of the states, as the appellant claims (Brief of Appellant, pp. 8-9). The limiting exemption of 1953(b) (2) exists simply because only one state, Nevada, permits off-track betting, the paraphernalia of which may be used in bookmaking in other states. Thus a broad exemption such as that allowed for pari-mutuel material, would nullify one of the primary aims of the statute halting interstate shipment of the wagering paraphernalia of illegal bookmaking operations.

numbers, policy, bolita enumerated in Section 1953(a) and the legal State-sanctioned gambling activity and newspapers in Section 1953(b).

Appellee submits that Section 1953(b)(1), (b)(2), and (b)(3) should be read as merely expositive of exemptions inferable from a reading of Section 1953(a). This is supported by the fact that the exemptions in Section 1953(b) are unnecessary because they are reasonably inferable from an application of the rules that criminal statutes and statutes in derogation of sovereignty must be construed narrowly. *United States v. Boston & M. R. R.*, 380 U. S. 157; Sutherland, Statutory Construction, Sec. 6301 (3rd ed. 1943).

b. Section 1953 in Pari-Materia With Companion Statutes.

When Section 1953 is read together with the other statutes drafted in coordination with it, it reflects the common design of these statutes to close interstate channels of commerce only where its use is tied to the furtherance of an underlying illegal gambling or other racketeering activity, and a converse purpose not to reach non-racketeering associated activities and those gambling activities permitted by the States.

Whereas Section 1953 proscribes one specific use of interstate facilities, the interstate transportation of the gambling paraphernalia associated with racketeering gambling activities, Section 1952 (joined with Section 1953 under Chapter 95 of Title 18 of the United States Code, entitled, significantly, "Racketeering"), is conceptually a much broader statute. Section 1952 proscribes interstate travel, transportation or use of any interstate facility, in furtherance of unlawful business enterprises involving gambling, liquor, narcotics and prostitution, or, in execution of the crimes of extortion, bribery, or arson, violative

of state or federal law (Appendix A). The close relationship between the two statutes however is apparent from a reading of them, and it is evident that these two statutes are different approaches to a common problem.

18 U.S.C. Section 1084, the 3d prong of the attack, is still another approach to the same objective. This statute prohibits the transmission of wagering information through a wire communication facility by persons engaged in the business of betting or wagering. As in Section 1953(b), an exemption is made in Section 1084(b) for the transmission of wagering information for use in news reporting of sporting events, and, in addition, for the transmission of information for the placement of bets on sporting events from a state where such betting is legal into a state in which such betting is legal (Appendix A).

The Gambling Devices Act of 1962, another statute in the package, forbids the interstate transportation of gambling machines.[8] Here too, however, specific exemptions are made for those gambling devices used at licensed gambling establishments where betting is legal under applicable State law[9] and, a further exemption for any device manufactured for use at a pari-mutuel race track[10] (Appendix A).

While it is true that specific phrases of limitation, such as "engaged in the business of wagering" in Section 1084(a), and "unlawful activity" in Section 1952(b) are present in these statutes, it does not follow that their absence in Section 1953 is persuasive that this statute was singled out by Congress from all the other statutes in the "package" to apply to underlying legal as well as illegal conduct. Because the mere act of travel or mere use of a wire communication is a neutral act and cannot

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[8] P. L. 87-840 (1962), Amending Act of Jan. 2, 1951, Ch. 1194, §2, 15 U. S. C. 1172 (1964).

[9] *Ibid.*

[10] P. L. 87-840 (1962), Amending Act of Jan. 2, 1951, Ch. 1194, §9, 15 U. S. C. 1178 (1964).

convey the underlying illegal nature of the conduct which Section 1084 and Section 1952 were concerned with, words of limitation were necessary to accurately characterize the illegality of the underlying conduct the statute sought to reached. This is not true of Section 1953 where proof via the carriage of the kind of paraphernalia associated with bookmaking, wagering pools, numbers, policy and bolita, all known types of illegal racketeering gambling, sufficiently identifies the underlying illegality of the conduct aimed at. Another significant fact to explain the presence of words of limitation in Section 1952 and Section 1084 is the acute constitutional sensitivity of the areas of travel and wire communications which understandably involve a need for legislative caution.

c. Legislative History.

Legislative history brings into sharper focus the mean- of Section 1953 which can be drawn from a reasonable reading of the words of the statute and its companion statutes. The hearings on these bills and the debate concerning them show that the crucial legislative assumption underlying Section 1953(a) was that the enumerated gambling activities were sufficiently notorious to convey to all persons the particular illegal class of gambling paraphernalia which Congress intended to reach (Appendix B, ¶¶ 10, 14, 15, 16, 17, 24, 25, 26, 27, 32).

No legislative historical evidence can be found which lends even oblique support to the appellant's position that Congress intended Section 1953 to apply to the paraphernalia of all lotteries. Not only did Congress not intend Section 1953 to apply to all lotteries, it did not even intend it to apply to all illegal lotteries (Appendix B, ¶¶ 27, 28, 29, 43).

Their guide in the enumeration of prohibitions of Section 1953 was not the compendium of gambling, but

rather, the class of gambling which the evidence before Congress had singled out as the domain of organized racketeering gamblers (Appendix B, ¶¶ 14, 19, 20, 21, 24).[11] The line was clearly drawn between certain underlying illegal gambling conduct familiarly associated with the gambling ventures of organized racketeering, as opposed to gambling conduct lawful in the states, and other non-racketeering, albeit illegal, gambling (Appendix B, ¶¶ 27, 28, 29).

Nor were the exemptions of Section 1953(b) intended to constitute the sole exemptions from the coverage of Section 1953(a), the role which the appellant has ascribed to them (Brief for the Appellant, p. 8). Legislative evidence shows the exemptions of Section 1953(b) were intended, as is clear on the face of the statute, to serve a cautionary purpose by providing specific exemptions for certain conduct which was never conceptually within prohibitions of Section 1953(a). Section 1953(b)(1) and (2) were added as an expression of deep Congressional concern for the inviolability of state gambling policies, an overriding dominant theme of the Congressional hearings and debates[12] (Appendix B, ¶¶ 33, 34, 38, 40, 42).

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[11] Aware that 18 U. S. C. §1301 was wholly ineffective to halt the flow of gambling paraphernalia used in racketeering gambling, Congress decided to fashion a new statutory weapon with §1953 rather than "plug the loopholes" of the old statute, as appellant suggests (see Appendix B. ¶18). The difference in the scope of the statutes is apparent from a comparative reading of them. §1301 refers to lotteries without any further refinement in definition while §1953 does not contain any such generic term, but out of the myriad of forms of gambling selects five specific types of gambling games. The specific role of §1953 in the legislative "package" was to halt the interstate shipment of raw materials necessary to the carrying on of illegal racketeering gambling activities (Appendix B, ¶¶ 14, 15, 16, 18, 19).

[12] Rep. Fascell in reference to S. 1657: "This bill properly exempts from its provisions pari-mutuel betting equipment where legally acquired or pari-mutuel materials designed for use at racetracks in states where such betting is legal. I am pleased to note the care which has been exercised to recognize and preserve the validity of state laws covering pari-mutuel betting operation." 107 Cong. Rec. 16540.

The exemption of Section 1953(b)(3), for newspapers and similar material, reflected extreme legislative caution that the right of free speech should not be placed in even minimal jeopardy[13] (Appendix B, ¶37).

Furthermore, the clear policy of Congress was that Section 1953 and its companion statutes should not interfere with the traditional scope of local law enforcement. Congress did not propose by these statutes to dictate a federal anti-gambling policy to the States. On the contrary, it intended that local law enforcement should continue to bear the burden of enforcement of State gambling policies and further, that these gambling policies, whether for or against gambling should not be interfered with (Appendix B, ¶¶ 33, 34, 36, 38, 39).

Appellant urges the broadest interpretation whereby Section 1953 would apply not only to the illegal forms of the gambling activity enumerated in Section 1953(a) but all legal varieties of these games as well. The legislative history makes patent, however, that Congress "carved out" of the plethora of gambling activities extant only those forms of gambling which were predominantly racketeer-associated and did not intend to affect by force of Section 1953 other gambling conduct, although such gambling conduct may be illegal under State law (see Appendix B, ¶¶ 27, 28, 29, 43).

The appellant justifies a strict literal interpretation of Section 1953 so as to include the New Hampshire

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[13] An exchange between Senator Keating and Assistant Attorney General Miller:

> Mr. Miller: Now the newspapers involved are not used or designed to be used in any of these three prohibited types of gambling, and consequently I feel very strongly that it would not be included within the purview of this bill.
>
> Senator Keating: It is not an essential part, but I can conceive of how it could be used. Would it not be a wise precaution to make some exception? You certainly would have no objection if an exception were written in to cover newspapers in general circulation which were not expressly designed for the purpose of aiding gambling. Sen. H. 289.

event, by contending that the purpose of the statute was to prevent the undermining of the public policy of the State's anti-gambling laws (Brief for the Appellant, pp. 8-9). While it is true that a ramification of the organized interstate illegal gambling activity sought to be prohibited by Section 1953 is the undermining of State gambling laws, it is misleading to say that this undesirable ramification is the evil sought to be remedied so that all gambling which may undermine state gambling laws was intended to be prohibited. In other words, Congress did not wish to halt all interstate gambling conduct which may violate the laws of any one State, but only those interstate gambling activities which were racketeer-associated.

This Court in *U. S. v. Carbone*, 327 U. S. 633, has recognized the substantial differences in the illegalities of conduct sought to be reached and the conduct encompassed by a literal reading of the statute. In that case the Federal Kickback Act[14] was not extended to illegal conduct which was covered by its terms. The Court said: "Not every person or act falling within the literal sweep of the . . . [statute] necessarily comes within its intent and purpose. That language must be read and applied in light of the evil which gave rise to the statute and the aims which the proponents sought to achieve. When that is done the inapplicability of the Act to the facts set forth in the indictment becomes clear." 327 U. S. at 633.

This indictment presents the rare case where the principle of non-applicability elicited from a reading of the statute and its legislative history can be applied to the indictment on its face. Since the underlying wager-

[14] Federal Kickback Act, Act of June 13, 1934, 48 Stat. 948, 40 U. S. C. §276b (1964).

ing activity is a legal state conducted event, the possibility of its being the kind of underlying illegal wagering conduct intended to be reached by the Section 1953 is conclusively rebutted. This is not to say that the paraphernalia of the New Hampshire event can never support a Section 1953 prosecution, but that where New Hampshire acknowledgments are alleged to be the gambling paraphernalia, gambling conduct within the ambit of the statute, other than the New Hampshire event, must be shown.

The interpretation of Section 1953 by the District Court preserves the workable assumptions of the statute and its symmetry with the companion measures. *Jarecki v. G. D. Searle & Co.*, 367 U. S. 303; *Boston and M. R. R.*, 380 U. S. 157.

II. Section 1953 should not be construed to apply to the New Hampshire event because to do so would be disruptive of federal-state relations, produce absurd results, and cast doubt on the constitutionality of the statute.

A. The Adverse Affect on Federal-State Relations.

The purpose of Section 1953 was to close the channels of interstate commerce to the shipment of paraphernalia of those racketeering-associated gambling activities enumerated in the statute. If there were no threat to state laws and law enforcement from multi-state operations of organized crime, federal entrance into the area of gambling law enforcement, a matter of traditional local con-

cern, would be unnecessary, unwarranted,[15] and specifically unintended by Congress.[16]

An interpretation of Section 1953 which ignores the crucial condition precedent which makes the statute operative, i. e., an underlying organized racketeering gambling activity, would be tantamount to imposing a federal anti-gambling policy on the states.[17] Such an interpretation should be avoided because of its serious adverse ramifications such as federal pre-emption of state laws; conflict

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[15] That carrying the evidence of a bet completed in a state where betting is legal into a state where placing the bet would be illegal was not intended to be reached by these statutes is shown by the testimony of Assistant Attorney General Miller in the House hearings.

> "Nevada, of course, is the best example . . . There it is legal. If that is the policy of the state to permit gambling that is a determination by that state that it is legal. Now, a man travelling in furtherance of that gambling activity, to say he takes the proceeds, and deposits them in a bank in New York, I can't conceive he falls within the prohibitions of this bill because there is no unlawful business he is furthering. "House Hearing, p. 343 on H. R. 6572. It should be noted that currency is considered wagering paraphernalia. *United States v. $1,058 in U. S. Currency*, 210 F. Supp. 45 (W. D. Pa. 1962)."

[16] This is evident not only from the total attention devoted to the problem of organized crime in the hearings, but also in the specific and frequent declarations by members of Congress expressing fear of pre-empting state laws (Appendix B, ¶¶ 38, 39) and fear of the Federal Government intruding in the area of enforcement properly matters of state and local concerns (Appendix B, ¶¶ 33, 34, 41, 42, 43). The legislative program shows unmistakable deference to every legal state permitted activity existing at the time of the passage of this legislation (Appendix B, ¶¶ 35, 36, 37, Appendix A).

[17] Congressional fear of this possibility is shown by the following statement of Sen. Eastland in debate:

> "Unfounded fears have blocked better progress in fighting the underworld. One of these fears is that a national police force may be established. Now I am as concerned about the dangers of a national police force as anyone, but it is apparent that we can go way beyond any of these measures before giving any substances to this specter. At present, the number of FBI agents is less than one-fourth the number of policemen in New York City alone, despite the nationwide obligations of this Federal agency. This bill may lead to an expansion in the manpower of the FBI but it definitely promises an even greater expansion of the protection of our Nation from the plundering of national crime syndicates. A successful fight against the underworld requires the cooperation of Federal, State, and local law enforcement agencies. This bill will make such cooperation more feasible than it has heretofore been. It assures a combined effort against all those in our midst who cross state lines in attempting to carry out their defiance of the law. 107 Cong. Rec. 13943."

with state gambling laws and policies;[18] heavy administrative burden on the federal enforcement and judicial agencies; and acute jurisdictional uncertainty.

In addition, such a maximum exercise of federal power in an area of minimal federal concern raises broad constitutional issues. Cf. *United States v. Kahringer*, 345 U. S. 34 (1953).

B. Absurd Results.

Where the words of a statute are so broad as to be applicable to widely disparate conduct, an examination of the consequences of a broad application serves as a meaningful indication of what conduct should be construed as within the ambit of the statute. *Church of the Holy Trinity v. United States*, 143 U. S. 457. It is well established that a statute should not be interpreted to per-

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[18] A federal anti-gambling policy would insure deep federal-state conflict (see Brief of the State of New Hampshire, as *amicus curiae*, p. 22). Prosecution of appellee under New York Law would be doubtful. N. Y. Penal Law §§ 1370-1386. See *Intercontinental Hotel v. Golden*, 15 N. Y. 2d 9, where the Court said:

> The legalization of pari-mutuel betting and the operation of bingo games, as well as a strong movement for legalized off-track betting, indicate that the New York public does not consider authorized gambling a violation of "some prevalent conception of good morals or some deep rooted tradition of the commonwealth." *Loucks v. Standard Oil Co.*, 224 N. Y. 99, 120 N. E. 198, 202 (1918).
>
> . . .
>
> The trend in New York State demonstrates an acceptance of licensed gambling transactions as a morally acceptable activity, not objectionable under the prevailing standards of lawful and approved social conduct in a community. Our newspapers quote the odds on horse races, football games, basketball games and print the names of the winners of the Irish Sweepstakes and the New Hampshire Lottery.
>
> Informed public sentiment in New York is only against unlicensed gambling, which is unsupervised, unregulated by law and which affords no protection to customers and no assurance of fairness or honesty in the operation of the gambling devices. 15 N. Y. 2d at 15.

N. Y. Penal Law §975, as amended by L. 1960, Ch. 549, §4, is designed only to cover policy slips. Maximum punishment under New York lottery statutes is one year imprisonment except for N. Y. Penal Law §1372 which provides for two years imprisonment.

mit absurd results capable of causing grave public injury. *Church of the Holy Trinity v. United States, supra.*

Under the unrestricted literal interpretation of Section 1953 urged by appellant, thousands of non-residents who participate in an openly conducted popular wagering event in reliance on the aura of legality fostered by a state-conducted operation, would be exposed to federal criminal penalties under a statute colored with racketeering terms. They would be subject to the same severe punishment which was intended to inhibit organized criminals. A non-resident citizen who wagers on a state pari-mutuel race would incur no federal penal liability while one who wagers on a sweepstakes-style state conducted event would be a felon. (This inapt result is especially egregious in this case since the same race track in New Hampshire is used for both pari-mutuel and sweepstakes races (*New Hampshire Sweepstakes Program,* Appendix D). A New Hampshire citizen who purchases a sweepstakes "acknowledgment" and carries it on his person into another state while on unrelated business is also a felon.

These are but a few situations illustrative of the results of an application of Section 1953 to the mere carriage of New Hampshire acknowledgments in interstate commerce. They illustrate the danger of a literal interpretation of the words of the statute whereby numerous law-abiding citizens incur penal liability for engaging in innocuous conduct from which no evil intent may be inferred. *Jarecki v. G. D. Searle & Co.,* 367 U. S. 303.

This unreasonable application of Section 1953, urged by appellee, is manifestly at variance with Congressional intent. Where a penal statute imposing harsh criminal penalties is involved, the words should not be expanded beyond their letter and spirit. *United States v. American Trucking Corp.,* 310 U. S. 534.

C. Constitutional Issue of Vagueness.

A penal statute must give fair notice of the conduct intended to be proscribed. Otherwise persons who would be law-abiding are not given clear warning of the acts which incur penal liability. *Winters v. New York,* 333 U. S. 507; *Musser v. Utah,* 333 U. S. 95. Where a statute sets forth a group of words, all of which have a similar and commonly understood connotation, the expansion of one of them beyond that context would be unexpected. An application of a statute bottomed on an unexpected interpretation of one phrase out of context with its statutory environment would be unconstitutional as violative of procedural due process for failing to adequately warn of the proscribed conduct. United States Const., Fifth Amendment (Appendix A). *Jarecki v. G. D. Searle & Co.,* 367 U. S. 303.

Section 1953 appearing in a Chapter in the United States Code entitled "Racketeering" enumerates certain games associated solely with those gambling activities in the domain of the underworld. Severe penalties are imposed for violations. Exempt from the operation of the statute, however, is state-sanctioned gambling activity. It is unforeseeable that a statute aimed at serious and harmful forms of conduct, worthy of punishment of five years imprisonment, would apply to the conduct here involved, freely indulged in by numerous law-abiding persons at the open invitation of a sovereign state. *Bouie v. City of Columbia,* 378 U. S. 347.[19]

[19] Appellee does not here argue that Congress has no power to make such conduct criminal, but that if Congress intends to exercise such drastic power, it must do so in unmistakably clear language so that those who would be law abiding receive fair warning of the conduct proscribed. Hall, *Strict or Liberal Construction of Penal Statutes,* 48 Harv. L. Rev. 748, 765-67 (1935); That there is no fair warning in this case is evident from the large numbers of non-residents of New Hampshire who have participated in the New Hampshire event (see Appendix C).

III. The government should be precluded from raising the relevance of facts not provable under the indictment, not alleged in the bill of particulars, nor referred to in the Jurisdictional Statement.

In a distinct retreat from the allegations of the indictment (R. 3), the bill of particulars (R. 5), and the Jurisdictional Statement, the appellant now proposes to argue in this Court not merely that appellant was carrying New Hampshire acknowledgments in interstate commerce, but that he was engaged in additional unlawful purpose (Brief for the Appellant, pp. 18-19; p. 14, n. 11). Appellee submits these facts are not properly before this Court because they are not alleged in the indictment nor provable under it. United States Const., Sixth Amendment (Appendix A); *Russell v. United States,* 369 U. S. 749; Fed. R. Crim. P. 7(c). Orfield, Criminal Procedure Under The Federal Rules, Section 7:10 (1966).

A fortiori, is this so in light of the bill of particulars which claims no violation of state law, and specifically that limits the charge against appellee to the mere carriage of New Hampshire acknowledgments in interstate commerce. Bill of particulars (R. 5). Orfield, *supra,* Section 7:143.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that this Court should affirm the judgment below.

BETTY D. FRIEDLANDER,
Attorney for Appellee.

October 1966.

APPENDIX A.

Constitutional Provisions.

United States Const., Fifth Amendment.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Const., Sixth Amendment.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Relevant Statutes.

18 U.S.C. § 1953. *Interstate transportation of wagering paraphernalia*

(a) Whoever, except a common carrier in the usual course of its business, knowingly carries or sends in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event; or (c) in a numbers, policy, bolita, or similar game shall be fined not more than $10,000 or imprisoned for not more than five years or both.

(b) This section shall not apply to (1) parimutuel betting equipment, parimutuel tickets where legally acquired, or parimutuel materials used or designed for use at racetracks or other sporting events in connection with which betting is legal under applicable State law, or (2) the transportation of betting materials to be used in the placing of bets or wagers on a sporting event into a State in which such betting is legal under the statutes of that State, or (3) the carriage or transportation in interstate or foreign commerce of any newspaper or similar publication.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia.

18 U.S.C. § 1952. *Interstate and foreign travel or transportation in aiding racketeering enterprises*

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics, or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

(c) Investigations of violations under this section involving liquor or narcotics shall be conducted under the supervision of the Secretary of the Treasury.

18 U.S.C. § 1084. *Transmission of wagering information; penalties*

(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

(b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State where betting on that sporting event or contest is legal into a State in which such betting is legal.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia.

(d) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, pen-

alty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement agency. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

15 U.S.C. § 1172. *Transportation of gambling devices as unlawful; exception; . . .*

It shall be unlawful knowingly to transport any gambling device to any place in a State, the District of Columbia, or a possession of the United States from any place outside of such State, the District of Columbia, or possession: *Provided,* That this section shall not apply to transportation of any gambling device to a place in any State which has enacted a law providing for the exemption of such State from the provisions of the section, or to a place in any subdivision of a State if the State in which such subdivision is located has enacted a law providing for the exemption of such subdivision from the provisions of this section, nor shall this section apply to any gambling device used or designed for use at and transported to licensed gambling establishments where betting is legal under applicable State laws: *Provided further,* That it shall not be unlawful to transport in interstate or foreign commerce any gambling device into any State in which the transported gambling device is specifically enumerated as lawful in a statute of that State.

. . .

15 U.S.C. § 1178. *Nonapplicability of chapter to certain machines and devices*

None of the provisions of this chapter shall be construed to apply—

(1) to any machine or mechanical device designed and manufactured primarily for use at a racetrack in connection with pari-mutuel betting. . . .

18 U.S.C. § 1301. *Importing or transporting lottery tickets*

Whoever brings into the United States for the purpose of disposing of the same, or knowingly deposits with any express company or other common carrier for carriage, or carries in interstate or foreign commerce any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift enterprise, or similar scheme; or knowingly takes or receives any such paper, certificate, instrument, advertisement, or list so brought, deposited, or transported, shall be fined not more than $1,000 or imprisoned not more than two years, or both.

138 U.S.C. § 1302. *Mailing lottery tickets or related matter*

Whoever knowingly deposits in the mail, or sends or delivers by mail:

Any letter, package, postal card, or circular concerning any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance;

Any lottery ticket or part thereof, or paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance;

Any check, draft, bill, money, postal note, or money order, for the purchase of any ticket or part thereof, or of any share or chance in any such lottery, gift enterprise, or scheme;

Any newspaper, circular, pamphlet, or publication of any kind containing any advertisement of any lottery, gift enterprise, or scheme of any kind offering prizes dependent in whole or in part upon lot or chance, or containing any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes;

Any article described in section 1953 of this title—

Shall be fined not more than $1,000 or imprisoned not more than two years, or both; and for any subsequent offense shall be imprisoned not more than five years.

APPENDIX B.

Excerpts From Legislative History of Section 1953 and Companion Statutes.

(A) Purpose of Section 1953 and Its Companion Statutes.

(B) Purpose of Section 1953.

(S.R. 1657; H.R. 3246; H.R. 6571.)

(C) Congressional Policy of Federal Non-interference With Lawful State Gambling Activities and Local Law Enforcement.

SOURCES:

*_The Attorney General's Program to Curb Organized Crime and Racketeering,_ Hearings, Senate Committee on the Judiciary, 87th Cong., 1st Sess. on

S. 1653 To amend Title 18, United States Code, To Prohibit Travel in Aid of Racketeering Enterprises.

S. 1654 To Amend Section 1073 of Title 18, United States Code, The Fugitive Felon Act.

S. 1655 To Amend Chapter 95 of Title 18, United States Code, To Permit the Compelling of Testimony Under Certain Conditions and the Granting of Immunity From Prosecution in Connection Therewith.

S. 1656 To Amend Chapter 50 of Title 18, United States Code, With Respect to the Transmission of Bets, Wagers, and Related Information.

S. 1657 To Provide Means for the Federal Government to Combat Interstate Crime and to Assist the States in the Enforcement of Their Criminal Laws by Prohibiting the Interstate Transportation of Wagering Paraphernalia.

S. 1658 To Amend the Act of January 2, 1951, Prohibiting the Transportation of Gambling Devices in Interstate and Foreign Commerce.

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* Herein referred to as Sen. H.

*Legislation Relating to Organized Crime, Hearings, Subcommittee No. 5 of the House Committee on the Judiciary, 87th Cong. 1st Sess. on

H. R. 468 A Bill to Amend Section 1073 of Title 18, United States Code, the Fugitive Felon Act.

H. R. 3022 A Bill to Amend Title 18 of the United States Code to Assist in the Prevention of the Interstate Transmission of Gambling Information.

H. R. 3023 A Bill to Amend Section 1073 of Title 18, United States Code, the Fugitive Felon Act.

H. R. 3246 A Bill to Provide Means for the Federal Government to Combat Interstate Crime and to Assist the States in the Enforcement of Their Criminal Laws by Prohibiting the Interstate Transportation of Wagering Paraphernalia.

H. R. 6571 A Bill to Provide Means for the Federal Government to Combat Interstate Crime and to Assist the States in the Enforcement of Their Criminal Laws by Prohibiting the Interstate Transporttaion of Wagering Paraphernalia.

H. R. 6572 A Bill to Amend Title 18, United States Code, to Prohibit Travel in Aid of Racketeering Enterprises.

H. R. 6909 A Bill to Strengthen the Criminal Laws so as to further protect all persons from the menace of organized and syndicated crime and for other purposes.

H. R. 7039 A Bill to Amend Chapter 50 of Title 18, United States Code, with Respect to the Transmission of Bets, Wagers and Related Information.

**107 *Congressional Record.*

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* Herein referred to as H. H.

** Herein referred to as Cong. Rec.

The Purpose of Section 1953 and Its Companion Statutes.

1. Attorney General Kennedy: Mr. Chairman, I am here today supporting proposed legislation which we, in the Department of Justice believe can be extremely effective in combating organized crime and racketeering. These proposals have been developed in the Department over a period of time to aid and assist local law enforcement officers in controlling hoodlums and racketeers who, in many instances, have become so rich and so powerful that they have outgrown local authorities. H.H. pp. 18-19.

2. Attorney General Kennedy: I wish to emphasize, Mr. Chairman, that we do not seek to preempt the field of enforcement or interfere in any way with the traditional responsibilities of local law enforcement . . . The cooperation between the Federal and local law enforcement agencies which exists today is effective. It is essential in getting action against organized crime, which is so well organized and so well entrenched on a multi-state basis that local law enforcement often is virtually powerless to act without aid and assistance of the Federal Government. S.H. p. 11.

3. Rep. McCulloch: In particular, the Congress should give careful consideration to the growth of syndicated criminal enterprises which are no longer confined within the boundaries of any one of the several States. In short, many of us in Congress, and in the executive Department of the Federal Government, have long been aware of the ever-increasing difficulty faced by local law enforcement officers in coping with the so-called racketeering offenses, and offenders.

These offenses, which are not local in their overall operation and execution, may well justify the intervention

of the Federal Government after we have listened to and developed all the pertinent facts. At this point, I hasten to add that because of the potentially far-reaching consequences of much of the proposed legislation, I am particularly interested in hearing and exploring the views and recommendations of local law enforcement officials. H.H. pp. 4-5.

4. Rep. Celler with respect to S. 1656: This bill only gets after the bookmaker, the gambler who makes it his business to take bets or to lay off bets. It does not get after the casual gambler who bets $2 on a race. That type of transaction is not within the purview of the statute. The objective is to strike a stunning blow, a deadly blow against the syndicated rackets which enable these gamblers to reap rich harvests because of their use of the telephone, the Western Union, in getting information. 107 Cong. Rec. 16534.

5. Rep. McCulloch in reference to S. 1653: The bill is wisely limited to those unlawful business enterprises, which experience has demonstrated, have been used by the underworld elements of organized crime. Cong. Rec. p. 16542.

6. Rep. Carroll referring to the package of bills generally: Powerful interstate crime syndicates now do an estimated annual business of $22 billion a year. These syndicates deal in vice and corruption—in gambling, narcotics, prostitution, and liquor violations . . .

It is obvious that a significant part of this increase in the crime rate across the Nation is due to the growing strength of interstate crime—to hoodlums and racketeers, who, says Attorney General Kennedy, Have become so rich and so powerful that they have outgrown local authority. . . .

It is important, Mr. President, that the Attorney General be given the weapons he needs for this battle against organized gangsterism. These bills, amending and strengthening the Federal criminal code statutes, deserve the prompt—and careful—attention of the Congress. Cong. Rec. 13946.

7. Sen. Kefauver: He (Kennedy) is to be commended for developing this legislation (*sic*) program against organized crime . . . With the new weapons given by the Attorney General's legislative program, the Department of Justice should be able to go far toward eliminating the evil of organized crime . . .

. . . the syndicates and racketeers and hoodlums could not carry on their multi-million dollar business without using the channels and facilities of interstate commerce. The power of the Congress to regulate interstate commerce and deny its use to organized crime has been largely unused while the racketeers turned its channels and facilities to their advantage. Cong. Rec. 13947.

8. Attorney General Kennedy: The racketeers and hoodlums in organized crime are becoming more powerful, more wealthy, and more menacing. We have submitted to you a series of bills through which we know the Federal Government can meet its responsibilities and be of great aid and assistance to local law enforcement. S.H. p. 17.

9. Donald S. Leonard, International Association of Chiefs of Police: Organized Crime constitutes not only a menace to legitimate business and society, but also to the Federal Government itself. Crime is everybody's business, costing us about $22 billion each year. The coordinating facilities of the Federal Government can meet the organized racketeer on equal terms without doing violence to the jurisdiction of the States in the field of law enforcement. H.H. p. 253.

10. Attorney General Kennedy: . . . there is considerable evidence that the operators of certain types of lotteries—which are undeniably interstate in character—have adopted various ways to avoid violating the narrow prohibitions of existing law. For example, lottery tickets may be printed in blank at a central point in one State, then transported to other States where the so-called playing numbers are overprinted. Without these numbers the blanks are not within the statutory definition of lottery tickets and their interstate transportation is not prohibited. Under the proposed measure, the blank tickets would be prohibited from interstate shipment as paper designed for use in a numbers or similar game.

The so-called numbers lottery, or one of its infinite variations, operates in virtually every major metropolitan area. Particularly where such a metropolitan area covers part of several States, it is not unusual that the numbers sellers in one State turn over their play to runners who report at a numbers bank in another State. The interstate carrying of slips or writings, indicating the amounts of bets and the numbers played, is essential to this type of operation. The proposed statute would prohibit the interstate carrying of such numbers slips.

The fear of a raid by Federal or local police has turned the attention of the numbers operators and the bookmakers to the problem of quick disposition of the records used in the conduct of the business. This would include the papers used to record the bets or the numbers played by the individual bettor. The operators are making our task more difficult through the use of flash paper for the quick disposition of the records. This paper is highly inflammable and will burst into flame if a cigarette is placed on it. In less time than it will take a law enforcement officer to cross the room, a bookmaker can turn his records into a pile of ashes of no use as evidence against him.

We wish to curtail the interstate transportation of this type of equipment. If we do so, the bookmaker and numbers operator is going to find another specialized type of equipment to frustrate our efforts. We thus are asking for this bill to curtail the interstate shipment of paraphernalia that is used, intended, or designed for use in their activities. With this broad prohibition we hope to be able to keep step with the criminal element as it tries a different approach to the problem. Sen. H. p. 9.

11. Attorney General Kennedy, referring to H.R. 6572: The main target of our bill is interstate travel to promote gambling. It also is aimed at the huge profits in the traffic in liquor, narcotics, prostitution, as well as the use of these funds for corrupting local officials and for their use in racketeering in labor and management. Thus, when we speak of unlawful business it is business engaged in the aforementioned improper activities. H.H. p. 20.

12. As some examples of the type of conduct at which H.R. 6572 was aimed Attorney General Kennedy said:

Our first example is as follows: Some notorious individuals, whose names you would immediately recognize, had interests in a numbers bank but lived in a resort town far from the scene of operation. Every month a messenger carried the profits of the numbers racket from the scene of operations to the resort town. One of the payments was in excess of $250,000. Thus, the persons reaping the profit from the illegal activity remained beyond the reach of the law enforcement officials at the place of operation and committed no crime in the State where they lived. Only the Federal Government can curtail the flow of funds which permit the kingpins to live far from the scene, preventing the local officials, burdened by the gambling activity, from punishing him.

If our bill is enacted we will be able to prosecute the courier who carries the funds across States lines and

in conjunction with the aiding and abetting statute (18 U.S.C. 2) we will be able to prosecute the person who caused the courier to travel—the kingpin. This example illustrates what we have found to be a pattern around the country where the apparently innocuous 10-cent numbers bet in a large city turns into tremendous profits in the hands of bigtime hoodlums.

Another example involves the frequent travel from a Middle Atlantic State to a New England State by the operator of a lottery—and/or members of his family—to make payments to winners or pick up money wagered. Our information reveals that, in order to avoid the statute proscribing interstate transportation of lottery tickets (18 U.S.C. 1301), the individual carried the plates for printing the tickets to the various States. He did that so the tickets could be printed locally.

In another instance in a Midwestern State, the scene of illicit operations is close to the border of the State. One individual travels daily between the two States. He conducts his layoff business in the one State and lives in a $200,000 house in the suburbs of a large city across the border in the other State.

Let me cite another example. The layoff men at the top of the bookmaking organization are in daily contact with each other to reinsure their bets and divide the action, thus assuring that all make a profit and no one takes an exorbitant risk.

These people can conduct their businesses by telephone. When local authorities get close to them, they merely pick up stakes and move to another jurisdiction. The best example of this moving to frustrate local police, is the case of a man who started operations as a layoff man in the Midwest in 1946. He moved to another town in 1949 and then to Newport, Ky., in 1950. In 1952,

under pressure of the Kefauver investigations into organized crime, he moved to Montreal, Canada. When the Royal Canadian Mounted Police raided his establishment he moved back to Newport, Ky.

We can follow these people from State to State and prosecute them for the very activities which now make a mockery of local law enforcement if this travel bill is enacted.

. . .

In summary, our information reveals numerous instances where the prime mover in a gambling or other illegal enterprise operates by remote control from the safety of another State—sometimes half a continent away. He sends henchmen to the scene of operations or travels himself from time to time to supervise the activity and check on his underlings. As for the profits, he receives his share by messenger.

Another example of the type of situation which we are trying to curb in proscribing the interstate travel in furtherance of an unlawful activity is the situation which arose in Hot Springs, Ark., in 1960. A printing company in Jefferson Parish, La., receives race wire information from Chicago bookmakers and disseminates the data to gambling establishments in sections of the South and Southwest. The company is owned by a racketeer, since deported, and his race service manager, of New Orleans. The manager, while in Hot Springs in March of 1960 got into a violent argument with the owner of the race wire service there. The Hot Springs man told the New Orleans man to stay in New Orleans as he could operate his business without help.

In May of 1960, the owner of the Hot Springs service traveled to Chicago and visited a Chicago rackets overlord. The Hot Springs man sought assistance in

curtailing the activities of the New Orleans group in seeking to take over his race wire service. If we could show the existence of race wire services in New Orleans and Hot Springs and the travel on the part of the New Orleans man to expand the New Orleans service and the travel of the Hot Springs man to protect his interest in the Hot Springs service we could prosecute both of these top racketeers with the enactment of the proposed bill.

A race wire service has been provided in Wisconsin by Chicago hoodlums. In return for allowing the race wire service to prosper in Wisconsin, a person, who is now the subject of intensive investigations, has been allocated a portion of Antioch, Ill. for the conduct of gambling. This individual apparently has trained his housemen at Kenosha before they traveled to Antioch to run the gambling operations. Such travel as by the Chicago people to Kenosha and the Kenosha hoodlums to Antioch would violate the bill as travel to promote an unlawful business, thus permitting the interruption if not the destruction of the gambling empires. H.H. pp. 20-23.

13. Exchange between Senator Keating and Assistant Attorney General Herbert S. Miller, wherein Senator Keating urged expansion of the scope of S. 1653.

Senator Keating: . . . Is there any reason other than the practical one why you would not feel like going further than S. 1653, and including the use of other interstate facilities?

Mr. Miller: Senator, let me answer your question in this way: There is the practical problem, which I will put to one side, as you suggest.

The other problem is basically, perhaps, a philosophical one, and that is how far the Federal Government should go in this particular field.

There are some who would feel, I think, perhaps, that if you put one more criminal violation in, you are going too far. And in S. 1653, we tried to tailor-make it, so to speak, to cover the people that we are trying to get, namely those engaged in organized crime.

. . . As I say, in looking at it practically, and in effect, looking at it in the light that we did try to tailor-make this bill to catch specific situations, and where we know the type of an operation involved, we know what is accomplished and what is done and how they use interstate facilities to further these operations . . . Sen. H. p. 111.

Purpose of Section 1953—(S.R. 1657; H.R. 3246; H.R. 6571).

14. Rep. Cahill: . . . I rise in support of S. 1657, a bill to prohibit the interstate transportation of wagering paraphernalia. This is a companion bill to the bill previously passed today by the House and again has as its objective a further aid to the Attorney General in the war on crime in this country.

Once again, it should be pointed out to the House that gambling supplies commercialized racketeers in this country. The manufacturers of wagering paraphernalia must in order to continue in business transport this equipment through interstate commence. This bill, therefore, would choke off at the source such gambling equipment and would permit the Federal Government to enter into the fight against organized crime at the early stage, that is, the time when the equipment is being transported into the various States of the Union.

There are sufficient exemptions in this bill, I think, to permit these activities which are legal in the States and protection has been extended to those activities which

are not designed to aid in the nefarious activities of the racketeers of the country.

This bill was, of course, urged by the Attorney General in his continuing fight against the organized syndicates of the country. Cong. Rec. 16538.

15. Rep. Celler: The primary purpose is to prevent the interstate commerce of wagering material. The purpose actually is to cut off and shut off gambling supplies, in reality to prevent these lotteries and kindred illegal diversions. Cong. Rec. 16537.

16. Sen. Kefauver: S. 1657 denies the channels of commerce to the transportation of gambling paraphernalia where it is sent into a State to be used in violation of the laws of that State. Cong. Rec. 13947.

17. Rep. McCulloch: The coverage of this bill is aimed at the shipment in interstate commerce of material which will be used to violate local law. The need for this bill is graphically illustrated by the limitation which local law enforcement officials are faced in being unable to cope with criminal enterprise which transcends the boundaries of a particular State. Cong. Rec. 16538.

18. Sen. Eastland: The Attorney General, in his testimony before the Judiciary committee stated that the use of the mails in advertising and conducting a bookmaking business did not violate present lottery statute because the selection of winners may require some skill or knowledge rather than mere chance . . . Nor do the lottery statutes in their present form cover the many thousands of sports betting slips which are transported daily across State lines, for they do not meet the traditional definitions of a lottery. . . . Even out and out lottery tickets may be shipped across State lines with impunity if they are printed in blank, shipped, and then locally overprinted with the playing numbers. . . .

It is anticipated that this bill will be of material assistance in bringing about a sharp curtailment of interstate wagering, and the shipment interstate of the wherewithal to conduct wagering activities in any one State. Bookmakers, as well as lottery and policy operators, need the channels of interstate commerce for bit-time operations. State law enforcement officials have been virtually handcuffed in trying to cope with them and the Federal Officials have lacked the statutory authority to render full assistance. With this bill, both may work hand in hand, as a team dedicated to the eradication of one of the great evils on the American scene today. Too many children go hungry because family funds needed for groceries are dumped into the coffers of the vice lords; too many government officials are tempted from their sworn duty by the bribes offered to them by the gamblers who mark up such outlays as the expenses of doing business. With the Federal Government assistance the local authorities will not be frustrated in their efforts, and as a result they may be expected to be even more diligent in their work than they have been in the past. Cong. Rec. 13902, 13903.

19. Assistant Attorney General Miller: This bill is one aspect of the Department's intensive attack on organized gambling, which supplies the bankroll for all the other multi-state criminal activities which tax the American people to the tune of $22 billion a year. Our records indicate that the three most prevalent types of gambling involve bookmaking, wagering pools on sporting events and the so-called numbers racket. H.H. p. 350.

20. Frank O'Connor, N. Y. Queens County District Attorney: Also dealing with the nationwide network of gambling rackets now under the control of the underworld syndicates are H. R. 3246, H. R. 6571 and H. R. 6572. H.H. p. 234.

21. Attorney General Kennedy said of S. 1657: As experience has shown with the Johnson Act, organized crime has great ingenuity in avoiding the law. The purpose of the broad prohibition in S. 1657, against interstate transportation of gambling paraphernalia, is to permit law enforcement to keep pace with the latest developments in this field. S.H. p. 14.

22. In introducing H. R. 6571 Attorney General Kennedy said: Another area of gambling which needs attention, if we are to make a coordinated and successful attack on organized crime, is the easy interstate transportation of wagering paraphernalia. H.H. p. 29.

23. In discussing the need for the broad language H. R. 6571, Attorney General Kennedy said: With this broad prohibition we hope to be able to keep step with the criminal element as it tries a different approach to the problem. H.H. p. 31.

24. Rep. Cramer, in support of Title VI of H. R. 6909, a bill similar to H.R. 6571, said: This title of my bill would make it a felony to send or carry knowingly in interstate or foreign commerce any wagering paraphernalia or device used, adapted or designed for use in bookmaking, wagering pools with respect to a sporting event or numbers, policy, bolita or similar illegal games. Bookmakers and lottery and policy operators presently thrive on widescale interstate operations. . . H.H. p. 97.

25. In answer to criticism that Title VI of H. R. 6909 cast the net too wide, Rep. Cramer said: Gambling paraphernalia, of course, is specifically limited to those things illegal in all States, involving numbers, rackets, and that sort of thing, so the question of the chairman, I think, is answered in that respect. H.H. p. 60.

26. When asked about the broadness of the concept of paraphernalia, Attorney General Kennedy said: That is

a broad word; but all those words are restricted as to the kind of event by (a), (b) and (c). H.H. p. 45.

27. Assistant Attorney General Miller discussing the scope of S. 1657 said: Senator, if I may, of course, we did attempt, I mean in all of these bills you have got two problems. One is specificity, and the second is that you do not want the bill so broad, as you so well pointed out to encompass activities which are perhaps innocent.

You do not want to bring an innocent man within the purview of the statute . . . We did attempt to limit the statute . . . by making the specific language of these various types of items we listed here applicable to three types of gambling only: that is, bookmaking, wagering pools, sporting events and your numbers game.

So those, we felt, would be the three biggest gambling operations and that was the type of thing we were aiming at. We did not attempt, for example, to cover, in normal gambling, cards or dice or punchboards or anything of that nature. S.H. p. 292.

28. In answer to whether a punchboard would be within the prohibitions of this bill, Rep. Cramer said: I just don't think there is any relationship between it and numbers, policy and bolita. They are very well-established types of gambling devices and a punchboard is not a similar game. H.H. p. 125.

29. When asked if bingo would be within the bill, Attorney General Kennedy said: Bingo in our judgment is not numbers, it is not policy and it is not bolita. It is not similar. H.H. p. 45.

30. Nathan Skolink, New York State Commission of Investigation: . . . bookmaking is the heart of illegal gambling . . . the bookmaker cannot operate alone, requiring, to a greater or lesser extent, a syndicate or organization and related services . . .

These indispensable services which keep bookmaking alive and fluorishing come from different parts of the United States. These services include wire communications and the transportation of gambling equipment and paraphernalia in interstate commerce. H.H. p. 272.

31. Mr. Celler: This bill only gets after the bookmaker, the gambler who makes it his business to take bets or lay off bets. It does not get after the casual gambler who bets $2 on a race. That type of transaction is not within the purview of the statute. Cong. Rec. 16534.

32. Attorney General Kennedy: American citizens who are not connected with organized gambling and organized crime have nothing to fear from these bills. The only toes tread on here are those of the racketeers and hoodlums. S.H. p. 17.

Congressional Policy of Federal Non-Interference With Lawful State Gambling Activities and Local Law Enforcement.

33. Rep. Celler: Thus, it can be said that there is ample need for these hearings to meet the problem of syndicated crime as it exists and as we know it today in America. But, on the other hand, a word of caution is necessary. Whenever there is expansion of Federal criminal jurisdiction as an auxiliary to State law enforcement a studied and deliberate approach to such expansion is most necessary. Basically, many of these organized crimes are local problems, and thus, to expand Federal jurisdiction over them would create many new difficulties. Additional Federal administrative problems may arise. There may be a tendency to weaken local law enforcement efforts due to Federal intervention. There is the serious problem also of the anomalies arising out of dual jurisdiction, such as dual prosecution—Federal and State

—for the same crime, the question of immunity, the filing of detainers, the disparity of sentencing. H.H. p. 3.

34. Donald Leonard, International Association of Police Chiefs: Local crimes should be and are suppressed by local authority; but interstate or national crime requires the attention of the Federal Government in fulfilling its obligation to the States.

None of these bills before us now provide for exclusive Federal jurisdiction. Each State retains its own power to deal with the criminal, but State enforcement is enhanced by plugging up the loopholes used by crooks and racketeers to avoid State apprehension and punishment. H.H. p. 253.

35. Assistant Attorney General Herbert J. Miller:

One thing that, frankly, we did not think about, was the fact that where you have legalized pari-mutuel tracks around the country, these tickets are sometimes manufactured, say, in Ohio and they are shipped to Miami, then used in pari-mutuel betting. Well, now, that type of betting, we feel, since it does deal with a legalized operation under State law, we should have perhaps an exclusion in here on that, to cover it.

The Chairman. You concluded that that should be eliminated so that there would be no possibility of their being held for a crime?

Mr. Miller. Yes. H.H. p. 352.

36. Assistant Attorney General Miller referring to H.R. 6572: You have to tie interstate travel to an unlawful, illegal transaction, otherwise any place you travel interstate would be covered.

Nevada, of course, is the best example, which we went into with Congressman Rogers. There it is legal. If that is the policy of the State to permit gambling that is a determination by the State that it is legal. Now, a man travelling in furtherance of that gambling activity, to say he takes the proceeds, deposits them in a bank in New York, I can't conceive he falls within the provisions of this bill because there is no unlawful business he is furthering. H.H. p. 343.

37. Rep. Celler said of H. R. 7039: Modern bookmaking and gambling, we know, depends on rapid communications of betting odds and lay offs.

Mr. Speaker, we have provided certain safeguards in the bill; for example the transmission of betting information from a State where gambling is on a race or contest is legal into a State where gambling on that particular race or sporting contest is also legal is exempted from the operation of the statute . . . Bona fide news reporting of sporting events is exempt and not interfered with. Cong. Rec. 16533.

38. Attorney General Kennedy: I wish to emphasize, Mr. Chairman, that we do not seek to pre-empt the field of enforcement or interfere in any way with the traditional responsibilities of local law enforcement . . . Sen. H. p. 11.

39. In relation to H.R. 468, the Fugitive Felon Act, Attorney General Kennedy: It is to help and assist the States, Mr. Chairman, not to try to gain jurisdiction ourselves . . .

Rep. McCulloch: But you have no intention of preempting action by the States if they are able to do the job?

Mr. Kennedy: Absolutely not. H.H. p. 42.

40. Attorney General Kennedy: These bills carefully limit the activities of the Federal Government to the most important and the most dangerous problems now facing law enforcement. Sen. H. p. 17.

41. Rep. McCulloch: Mr. Speaker, S. 1657 is another one of the series of bills, aimed at organized crime, which has the support of this administration . . .

S. 1657 will make it unlawful to transport in interstate commerce the paraphernalia and material which is used by professional bookmakers and numbers men. There is a special exemption for pari-mutuel betting equipment and betting material transported into States in which the use of such materials is legal.

The coverage of this bill is aimed at the shipment in interstate commerce of material which will be used to violate local law. The need for this bill is graphically illustrated by the limitation with which local law enforcement officials are faced in being unable to cope with criminal enterprise which transcends the boundaries of a particular State. Cong. Rec. 16538.

42. Rep. McCulloch: These offenses, which are not local in their overall operation and execution, may well justify the intervention of the Federal Government after we have listened to and developed all the pertinent facts. At this point, I hasten to add that because of the potentially far-reaching consequences of much of the proposed legislation, I am particularly interested in hearing and exploring the views and recommendations of local law enforcement officials. H.H. pp. 4-5.

43. An exchange between Rep. Celler and Arnold Bauman, N. Y. County Lawyer's Assoc.: The Chairman: On that point, Mr. Bauman, I would like to make this observation. Getting to the leaders is fine. Don't you think that we could be making a serious mistake when we begin

to rely too heavily on Federal Government, Federal enforcement agencies, where there is the ability in the local law enforcement agencies to prosecute and handle these situations, and that there might be a tendency on the part of the local law enforcement agencies to break down?

Mr. Bauman: I could not agree with your statement more, Mr. Chairman, I think that is absolutely right . . . What I think should be done, is in effect, what the Attorney General is seeking to do here . . .

There is no question in my mind that is a good approach . . . It would be a serious mistake, gentlemen, to disperse your efforts in law enforcement by attempting to take on the local range.

The Chairman: If this is just to get to the small fry, the little bookmakers, all these other little people, instead of the kingpins, then we make a serious mistake?

Mr. Bauman: I agree with that, sir. H.H. pp. 332-333.

APPENDIX C.

1964, 1965, 1966 New Hampshire Sweepstakes Total Prize Winners by State and Foreign Countries.

(See opposite page.) ☞

1964, 1965, 1966 New Hampshire Sweepstakes
Total Prize Winners by States and Foreign Countries

	No. of Tickets Drawn & Matched with a Horse	Consolation Prizes	Bonus Drawings	Total
Alabama	2	--	1	3
Alaska	2	1	--	3
Arizona	7	1	1	9
Arkansas	2	1	--	3
California	92	10	4	106
Colorado	6	--	--	6
Connecticut	711	96	25	832
Delaware	19	1	--	20
Florida	93	16	3	112
Georgia	6	1	2	9
Hawaii	2	--	--	2
Idaho	1	--	--	1
Illinois	25	4	2	31
Indiana	17	7	1	25
Iowa	8	2	--	10
Kansas	2	--	--	2
Kentucky	3	--	--	3
Louisiana	8	1	1	10
Maine	158	18	10	186
Maryland	48	6	--	54
Massachusetts	2104	239	75	2418
Michigan	55	9	4	68
Minnesota	4	1	1	6
Mississippi	1	--	--	1
Missouri	16	4	--	20
Nebraska	4	2	--	6
Nevada	1	--	--	1
New Hampshire	1185	167	70	1422
New Jersey	690	108	36	834
New Mexico	2	--	--	2
New York	1131	175	43	1349
North Carolina	8	2	--	10
Ohio	57	10	1	68
Oklahoma	3	--	--	3
Pennsylvania	314	50	10	374
Rhode Island	245	32	3	280
South Carolina	3	--	--	3
South Dakota	1	--	--	1
Tennessee	3	2	--	5
Texas	10	5	2	17
Vermont	70	8	2	80
Virginia	39	4	--	43
Washington	13	--	1	14
West Virginia	3	1	--	4
Wisconsin	10	1	--	11
District of Columbia	25	4	--	29
Foreign Countries				
Canada	62	11	1	74
Canal Zone	2	--	--	2
England	1	--	--	1
Germany	2	--	--	2
Ireland	2	--	--	2
Philippine Islands	2	--	--	2
Sweden	--	--	1	1
Total	7280	1000	300	8580

Summary: 45 States, District of Columbia, 7 Foreign Countries

APPENDIX D.

New Hampshire Sweepstakes Program.

(See opposite page.) ☞

NEW HAMPSHIRE
Sweepstakes
Program

an aid...

...to education

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Governor John W. King

Executive Councilors

District	1	William A. Styles, *Northumberland*
District	2	Austin F. Quinney, *Exeter*
District	3	Emile Simard, *Manchester*
District	4	Robert L. Mallat, Jr., *Keene*
District	5	James H. Hayes, *Concord*

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NEW HAMPSHIRE SWEEPSTAKES COMMISSION

State House Annex, Concord, New Hampshire

HOWELL F. SHEPARD, *Chairman* — Commissioner

HENRY J. TURCOTTE — Commissioner

EDWARD SANEL, SR. — Commissioner

EDWARD J. POWERS
Executive Director

LEO A. HOGAN
Executive Officer

JAMES M. KENNEDY
Executive Officer

June 1, 1966

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BACKGROUND

1. Q. When was the Sweepstakes program established?

   A. Governor John W. King signed the bill legalizing the Sweepstakes program on April 30, 1963, and it became law 60 days thereafter.

2. Q. How much money was appropriated by the Legislature to initiate this program?

   A. The Legislature appropriated $250,000 from the General Fund of the State. The Sweepstakes Commission used only $85,360.36 to initiate the program and this amount was repaid to the General Fund within a few weeks after the sale of tickets started.

3. Q. What were the results of the local option voting of the cities and towns on March 10, 1964?

   A. Registered voters of each city and town voted by special ballot as to whether they desired Sweepstakes tickets sold in their respective communities. The people voted in a majority of over 3 to 1 in favor of the Sweepstakes program. Only twelve towns of a total of 237 cities and towns in New Hampshire voted against the program. The population of these towns is less than 2% of the total population of the State. All of the cities and towns with a State liquor store or licensed race track voted in favor of the program. Under the Sweepstakes law, the cities and towns will again vote on this question in November, 1966, and every two years thereafter.

4. Q. When did the tickets go on sale for the first time?

   A. Tickets were sold at Rockingham Park race track for the first time on the evening of March 12, 1964. Governor John W. King purchased the first ticket bearing No. 0000001. The ticket-dispensing machines were installed in the State

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liquor stores during the week of March 23, 1964, and these installations were completed by March 31.

POLICIES AND PROCEDURES

5. Q. Are mail orders for tickets accepted?

   A. Mail orders for tickets are not accepted by the Commission. Many letters enclosing cash and checks for the purchase of tickets have been received and in all instances have been returned to the senders. U.S. postal regulations prohibit the use of the mails in the purchase of tickets.

6. Q. Are members of the Sweepstakes Commission or its staff eligible for prizes?

   A. No, the Sweepstakes Commission has adopted a policy that no member of the Commission or its staff is eligible for a prize.

7. Q. Is it permissible for minors to purchase tickets?

   A. Tickets will not be sold to persons under the age of 21. However, it is permissible for an adult to purchase a ticket in the name of a minor.

8. Q. Where are Sweepstakes tickets sold?

   A. Tickets are sold only in New Hampshire at State liquor stores, licensed race tracks, the Commission's office in Concord, branch offices at highway toll information parking areas at Hampton and Hooksett, N.H., and sales office on Route 28 highway at Rockingham Park, Salem, N.H. There are 51 State liquor stores and two licensed parimutuel race tracks, Rockingham Park race track, Salem, N.H., and Hinsdale Raceway, Hinsdale, N.H. Tickets are sold at Rockingham Park throughout the year irrespective of whether a race meet is in session. Tickets are sold Monday through Saturday at all sales outlets.

9. Q. What is the cost of a Sweepstakes ticket?
A. $3.00.

10 Q. How are the tickets sold?

A. They are sold from specially designed ticket-dispensing machines. The tickets themselves remain in the machines, and the purchaser receives an acknowledgment which is ejected from the machine. The acknowledgment need not be retained or presented in order to participate in prizes. It is not a claim on a prize or a document of title. Both the tickets and acknowledgments are printed on NCR (no carbon required) paper, specially manufactured for the New Hampshire Sweepstakes Commission and incorporating numerous safety features.

11. Q. Is a name and address required on the Sweepstakes ticket?

A. Yes, the purchaser prints a name and address on each ticket and receives an acknowledgment of purchase. This acknowledgment contains the name and address and ticket number. The acknowledgment is non-saleable and non-transferable, and prizes are awarded on the basis of the name and address on the ticket which remains in the ticket-dispensing machine. For this reason the use of nom de plume is discouraged, since a winner who has used a nom de plume may experience difficutly in providing acceptable identification and thereafter cashing his prize.

12. Q. Is it possible for a person to purchase tickets in the names of others?

A. A person may purchase tickets in the names of others. For example, if the purchaser wishes to buy tickets for relatives or friends, he may do so by printing the names and addresses of such persons and only the named persons will be eligible for a prize.

13. Q. Is it permissible to buy tickets in the names

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of social, business, charitable or religious organizations?

A. Tickets may be purchased in the names of any of the above-described organizations, and any prize would be paid to such organizations as their names appear on the tickets.

14. Q. May tickets be purchased by persons who do not reside in New Hampshire?

A. Non-residents may purchase tickets in New Hampshire at the authorized locations either in their own names or the names and addresses of others.

15. Q. Is there any limit to the number of tickets which may be purchased?

A. A purchaser may buy only ten tickets at any one time through the ticket-dispensing machines. This policy was adopted by the Commission to prevent a machine from being tied up for an undue period of time where a purchaser is buying tickets in quantities of more than ten, and where there is a line of persons desiring to buy tickets. In the event a person wishes to purchase more than ten tickets, he may do so by returning to the attendant and purchasing the additional tickets, not to exceed ten at a given time. The ticket-dispensing machine may be activated for no more than ten tickets at one time. Special arrangements have been made for volume purchases where a quantity of tickets is desired.

16. Q. What are the arrangements for volume purchases?

A. Purchase of ten or more tickets may be made at Rockingham Park race track, Salem, N.H., the Commission's office in Concord, and at all State liquor stores. Application blanks for volume purchases are available at all sales outlets. Purchasers may submit lists of names and addresses at these locations. Sales clerks will either type or print the tickets. Depending on the number of names submitted, purchasers may

desire to return later and obtain their acknowledgments of purchase.

17. Q. Is electronic data processing equipment used to account for the tickets and funds?

A. The Merchants National Bank, Manchester, N.H., is the clearing house bank to receive, process and record all tickets and funds, as well as to provide vault storage for the tickets. This bank has the most modern type of electronic data processing equipment; daily computer reports account for the sale of tickets at each location. Banks throughout the State of New Hampshire are also cooperating in the program and receive daily deposits of tickets and funds from each of the selling locations.

18. Q. What security is provided for the sold tickets after they are deposited in the area bank?

A. The sold tickets are placed in the vault of the area bank where they remain until they are microfilmed by Sweepstakes Commission employees. Thereafter they are transported to the Merchants National Bank in Manchester where they remain in vault storage until time for the public drawings. The principal reason for microfilming the tickets is to insure against any mishap that might occur in the transportation of the sold tickets from the area bank to Merchants National Bank.

19. Q. How will the prize be paid if a Sweepstakes ticket is made out in more than one name?

A. While the Sweepstakes ticket is designed for only one name, the prize will be paid to whatever name or names appear on the ticket. E.g. James Jones and family; John and Mary Roe; Henry Smith et al.

20. Q. How are prize winners notified and paid their prizes?

A. Immediately after the drawings each winner is notified by telegram. After the race has been run, the prize winnings are deposited at the

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Merchants National Bank, Manchester, N.H. to the names and addresses of the winners. The prize winners are thereafter paid through normal commercial bank channels. This is true of both New Hampshire and out-of-state winners. Of course, a prize winner may appear at the bank in person to claim his prize.

21. Q. Is the amount of prize winnings determined by the drawings?

A. The drawings are used to draw tickets at random and match them with all horses nominated for the race. The amount of prize is determined by whether the horse runs in the race and if so, where it finishes. At the time the drawings are conducted, the identities of the horses that will run in the race are not known; however, every ticket drawn and matched with a horse is certain to win a prize.

22. Q. How are the drawings conducted?

A. All drawings are conducted in public. The tickets are placed in large plexiglass drums, electrically rotated. Each drum contains $500,000 worth of tickets (166,667 tickets). There is a small drum containing the names of all horses nominated for the races. After rotation of the drums to insure thorough mixing, a Sweepstakes ticket is drawn from each drum and matched with each nominated horse. Thereafter 75 tickets are drawn from each drum for consolation prizes of $100 each. The consolation prize tickets are not matched with horses. Since there have been 450 horses nominated for the 1966 Sweepstakes races, this means there will be a total of 525 prizes for each drum of $500,000 worth of tickets sold. In the 1964 and 1965 Sweepstakes, each drum contained a million dollars worth of tickets sold, but this was changed to $500,000 worth of tickets in each drum to facilitate the tumbling action of the tickets and to permit faster sales completion of the drums. Many people desire to

make sure they have purchased tickets for each drum and thereby have a chance at all of the prizes in each drum of tickets.

23. Q. When will the drawings be held?

A. The drawings will be held a few days prior to each race.

24. Q. What determines whether a horse will run in the race?

A. This is a decision of the horse owner who has nominated his horse for the race. If the owner pays the entry and starting fees, his horse will then be eligible to run in the race. He will not pay these additional fees unless he believes his horse has a reasonable chance of sharing in the purse. The entry fee is paid a few days prior to the race and the starting fee is paid the morning of the race.

1964 AND 1965 SWEEPSTAKES

25. Q. How many Sweepstakes tickets were sold?

A. For the 1964 Sweepstakes a total of 1,910,-031 Sweepstakes tickets, representing $5,730,-093, were sold.
For the 1965 Sweepstakes a total of 1,300,532 tickets, representing $3,901,596, were sold.

26. Q. When were the races held?

A. The 1964 N.H. Sweepstakes Classic was held on September 12 and the 1965 race was held on September 4 at Rockingham Park race track, Salem, N.H.

27. Q. How many prize winners were there?

A. In the 1964 Sweepstakes there were 1992 prize winners who shared $1,800,000 in prizes. These prize winners were from 37 states, the District of Columbia, Canal Zone, Ireland, and Canada. In the 1965 Sweepstakes there were

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2088 prize winners who shared $1,400,000 in prizes. These prize winners were from 35 states, the District of Columbia, Canada, Germany, and the Philippines.

28. Q. What were the purse and the results of the 1965 Sweepstakes race?

A. The purse for the 1965 Sweepstakes race was $250,000 added. The word "added" means that all of the nominating, entry and starting fees are added to the purse. The Sweepstakes Commission contributed $200,000 to this purse and Rockingham Park race track $50,000. The total purse amounted to $280,220. There were 422 horses nominated for the race and 10 horses actually ran. The first four horses finished as follows: (1) Pass The Word, (2) Hail To All, (3) Naturalist, (4) Munden Point.

29. Q. What were the net proceeds distributd for public education?

A. The net proceeds for the 1964 Sweepstakes amounted to $2,768,088.59. The state Treasurer distributed these proceeds on December 15, 1964 to all State school districts on a flat grant per resident pupil basis. The net proceeds were distributed on the basis of 114,000 pupils or approximately $24 per pupil. The net proceeds for the 1965 Sweepstakes amounted to $2,487,-365.85. This figure includes the refund of $617,-808.49, including interest, by the Federal Government for the federal excise taxes paid by the Sweepstakes Commission for 1964 ticket sales and $110,966.73, including interest, for the 1965 ticket sales. In June, 1965, Congress exempted the N.H. Sweepstakes from the 10% Federal Wagering Tax. The net proceeds were distributed on the basis of 120,000 pupils, or approximately $21 per pupil.

30. Q. How much has the Sweepstakes program contributed to public education since it began on March 12, 1964?

A. In the first year and a half of operation, the New Hampshire Sweepstakes provided $5,255,454.44 for the State school districts as an aid to public education. This $5,255,454.44 represents an increase of over 50% for State aid provided public education during this period.

31. Q. What were the expenses for the 1965 Sweepstakes program?

A. The operating expenses total $478,192.91, which includes the $97,011.58 paid to the State Liquor Commission for the sale of tickets by their personnel. In addition, $200,000 was paid as the State's share of the purse for the 1965 N.H. Sweepstakes Classic.

1966 SWEEPSTAKES PROGRAM

32. Q. How many races will there be for the 1966 Sweepstakes?

A. There will be two Sweepstakes races in 1966. The first Sweepstakes race, called the Rockingham Special, with a purse of $75,000 added, is scheduled for July 16, 1966. The New Hampshire Jockey Club will contribute all of the purse for this race. The second Sweepstakes race, called the N.H. Sweepstakes Classic, with a purse of $250,000 added, is scheduled for September 3, 1966. The Sweepstakes Commission will contribute $200,000 of this purse and the New Hampshire Jockey Club $50,000.

33. Q. What are the nominating, entry, and starting fees?

A. The nominating fee for both races is $10. The entry fee for the Rockingham Special is $500, and the starting fee $1,000. The entry fee for the N.H. Sweepstakes Classic is $1,000 and the starting fee $1,500. Nominations closed March 1, 1966.

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34. Q. What is the distance for the races?

A. The Rockingham Special will be 1 mile and a furlong. The N.H. Sweepstakes Classic will be the Lou Smith Course (1 mile and ¼).

35. Q. When did tickets go on sale for the 1966 Sweepstakes?

A. Tickets for the first race of the 1966 Sweepstakes went on sale at all sales outlets on September 1, 1965 and will continue through July 9, 1966. Tickets for the second Sweepstakes race went on sale on March 4, 1966 and will continue through August 27, 1966. Tickets for the 1967 Sweepstakes will go on sale August 29, 1966.

36. Q. Will all horses nominated be eligible to run in the two Sweepstakes races?

A. Yes. All horses nominated will be eligible to run in either or both of the Sweepstakes races. The finest horses in the nation are included in the 450 horses nominated for the two 1966 Sweepstakes races.

37. Q. What is the prize schedule for the 1966 races?

A. A complete series of prizes, starting with $50,000, $25,000, and $12,500, will be awarded for each half million dollars of sales. Each series will consist of one prize for each horse that has been nominated, plus 75 consolation prizes. Since 450 horses have been nominated for the races, there will be a total of 525 prizes in each half-million-dollar series. Prizes for each series will be awarded as follows:

Owner of ticket on winning horse	$50,000
Owner of ticket on second horse	25,000
Owner of ticket on third horse	12,500
Owners of tickets on other starters share in a pool of	20,000
Owners of tickets on non-starters share in a pool of	60,000

CONSOLATION PRIZES

For each half million dollars of tickets sold, there will be 75 consolation prizes of $100 each.

38. Q. Does the same prize schedule apply to both Sweepstakes races?

A. Yes. The same prize schedule applies to both Sweepstakes races. Of course, a separate series of tickets will be sold for each race and, therefore, tickets sold for the first race will not be eligible for prizes in the second race.

39. Q. Why was the prize schedule changed for the 1966 Sweepstakes?

A. The prize schedule was changed to double the number of prizes and thereby double the chances of winning a prize. Also, the new schedule gives greater distribution of the prize money and leaves more of it with the public after taxes.

40. Q. What are the bonus drawings?

A. The bonus drawings were an innovation for the 1966 Sweepstakes. The Commission decided to award $5,000 in prizes to encourage early buying of tickets. There were 100 prizes of $50 each and two bonus drawings were held. The $5,000 bonus drawing on January 5, 1966 was for all tickets sold from September 1, 1965 to December 24, 1965. The $5,000 bonus drawing on April 20, 1966 was for all tickets sold from December 27, 1965 to April 9, 1966.

At each bonus drawing the numbers of all sold tickets were stored on disks in the IBM 1440 computer at the Merchants National Bank, Manchester, and a random number generator was used to select the lucky winners. After the numbers had been selected, the tickets were checked to determine the name and address of the owner of each winning ticket. The drawings were held in the lobby of the Merchants National Bank and closed-circuit television was employed

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so the public and press could conveniently view the proceedings.

All tickets that participated in the two bonus drawings remain eligible to participate in the main drawing before the race for which they were bought.

GENERAL INFORMATION

41. Q. Have business firms purchased tickets as promotional items for their customers or as incentives for their employees?

A. Yes, the use of Sweepstakes tickets as incentive items has been increasingly attractive to business firms. For example, a national dairy company, a nationwide electrical manufacturer, merchants associations, chambers of commerce, a national plumbing supply company, and New Hampshire supermarkets have used Sweepstakes tickets as a stimulus to business or as an incentive for increased efficiency on the part of their employees.

42. Q. Have Sweepstakes clubs been formed for the purchase of tickets?

A. Yes. Sweepstakes clubs have been formed in social groups, manufacturing plants, and offices to purchase tickets on a weekly basis. A name is given to the club and the ticket is made out in this name with the name and address of the treasurer. All contributors share equally in any prize that may be won. In the 1965 Sweepstakes a club consisting of 13 fellow employees of a manufacturing plant in Manchester, N.H., shared in a prize of $100,000.

43. Q. Are the tickets and acknowledgments printed on safety paper?

A. Safety paper is specially manufactured for the New Hampshire Sweepstakes Commission and printed by Royal Business Forms, Nashua, N.H., with several additional safety features.

Since the tickets, on which all prizes will be based, remain in the possession of the Commission, it is impossible for counterfeit tickets to enter the system. The tickets are in continuous form in consecutive numbers and this feature provides internal safeguards, quick accountability and expeditious filing.

44. Q. What does the staff of the Sweepstakes Commission consist of at the present time?

A. The staff consists of the following employees: Executive Director, Executive Officer in Charge of Field Operations, Executive Officer in Charge of Systems Control, four Supervisors, two Assistant Supervisors, three Maintenance Repairmen, two Stenographers, one Accountant, and a Clerk Typist for a total of 16 persons. Sales of tickets at the race tracks and at the toll station parking areas are handled by sales clerks employed by the Sweepstakes Commission on a temporary basis. Persons selling tickets at the State Liquor Stores are employees of the New Hampshire State Liquor Commission.

45. Q. How much is paid the State Liquor Commission for their services in selling Sweepstakes tickets?

A. By legislative enactment, the State Liquor Commission is paid 4% of their gross ticket sales, or 12¢ per ticket.

46. Q. What are the principal objectives of the Sweepstakes Commission?

A. The principal objectives are to establish an honest, efficient, workable program that will encourage and promote the sale of tickets, thereby providing substantial revenue for public education.

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SWEEPSTAKES TICKET
SALES LOCATIONS
State Liquor Store
Race Track
Highway Toll Plaza
COLEBROOK
GROVETON
BERLIN
LANCASTER
WHITEFIELD
LITTLETON
WOODSVILLE
NO. WOODSTOCK
CONWAY
NEW HAMPSHIRE
PLYMOUTH
ASHLAND
MEREDITH
LEBANON
BRISTOL
WOLFEBORO
LACONIA
FRANKLIN
CLAREMONT
FARMINGTON
NEWPORT
PITTSFIELD
ROCHESTER
PENACOOK
CONCORD
SOMERSWORTH
DOVER
HILLSBORO
SUNCOOK
NO. WALPOLE
HOOKSETT
PORTSMOUTH (2)
MANCHESTER (5)
EXETER
KEENE
HAMPTON
PETERBOROUGH
DERRY
HINSDALE
JAFFREY
MILFORD
PLAISTOW
SEABROOK
HINSDALE RACEWAY
SALEM DEPOT
GREENVILLE
NASHUA (3)
ROCKINGHAM PARK
PELHAM

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STATE LIQUOR STORE LOCATIONS

46	Ashland	Main Street
5	Berlin	103 Pleasant Street
44	Bristol	72 Lake Street
8	Claremont	104 Pleasant Street
18	Colebrook	Main Street
1	Concord	161 North Main Street
28	Conway	Route No. 16
20	Derry	24 West Broadway
9	Dover	328 Central Avenue
25	Exeter	36 Portsmouth Avenue
43	Farmington	Route No. 11
17	Franklin	190 Central Street
22	Greenville	Main Street
26	Groveton	Main Street
35	Hillsboro	Henniker Street
48	Hinsdale	Main Street
36	Jaffrey	135 Peterboro Road
15	Keene	37-39 Roxbury Street
12	Laconia	390 Main Street
37	Lancaster	95 Main Street
11	Lebanon	9 Court Street
7	Littleton	Lisbon Road
2	Manchester	1204 Elm Street
3	Manchester	513 Main Street
10	Manchester	611 Elm Street
31	Manchester	Cor. Valley & Lincoln St
33	Manchester	430 Second Street
42	Meredith	Route No. 3
30	Milford	Main Street
4	Nashua	19 Railroad Square
27	Nashua	260-A Main Street
50	Nashua	Daniel Webster Highway
24	Newport	16 Depot Street
40	No. Walpole	16 Church Street
47	No. Woodstock	Main Street
51	Pelham	Route No. 38
32	Penacook	42 South Main Street
21	Peterboro	Route No. 202
45	Pittsfield	Water Street
49	Plaistow	Route No. 125
19	Plymouth	57 Main Street
6	Portsmouth	58 State Street
38	Portsmouth	Interstate Highway
14	Rochester	Signal Street
34	Salem Depot	South Broadway
41	Seabrook	Lafayette Boulevard
13	Somersworth	33 Main Street
28	Suncook	116 Main Street
29	Whitefield	Astle Block, King Square
39	Wolfeboro	Wolfeboro Falls
16	Woodsville	89 Central Street

Licensed Race Tracks

Rockingham Park	Salem
Hinsdale Raceway	Hinsdale